

Dated: November 18, 2008.

Gary Klein,

Associate Administrator.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR part 102–192 as set forth below:

PART 102–192—MAIL MANAGEMENT

1. The authority citation for 41 CFR part 102–192 continues to read as follows:

Authority: 44 U.S.C. 2904; 40 U.S.C. 121(c).

2. Revise Subpart B of 41 CFR part 102–192 to read as follows:

Subpart B—Financial Requirements for All Agencies

§ 102–192.50 What payment processes are we required to use?

All payments to all service providers must be made through a process that ensures accountability to the program level, as defined in § 102–192.55.

§ 102–192.55 What options are available to show accountability?

(a) Your agency must show accountability by using at least two of the following methods:

(1) Implement or continue using commercial payment processes.

(2) Show quantified dollar savings in mail costs that result from management action, with a clear explanation of how the savings were achieved. Dollar savings must be recent, defined as occurring within the last five fiscal years. That is, after five fiscal years, additional information about how the agency has achieved recent savings and/or will continue to achieve dollar savings will be required in the annual mail management report.

(3) Provide a detailed breakdown of all agency mail costs.

(4) Provide names, responsibility areas, and mail costs for program officials who are accountable for 75 percent (or more) of the agency's postage.

(5) Provide cost-per-piece data for at least 75 percent of all outgoing mail.

(b) Agencies that spend more than \$1 million per year on postage must describe how they are showing accountability by responding fully, beginning with the Fiscal Year 2009 report, to the questions on accountability in the annual report format. Agencies that do not respond fully or whose responses do not, in the judgment of the GSA Office of Governmentwide Policy, meet the standard established in this paragraph, will be considered out of compliance with this regulation.

§ 102–192.60 If my agency spends less than \$1 million per year on postage and has already converted to commercial payment processes, are we responsible for selecting one of the additional options?

Any agency that spends less than \$1 million on postage per year and has already successfully converted to commercial payment is in compliance with this regulation and does not need to select any additional options presented in § 102–192.55.

§ 102–192.65 If my agency still wants to implement the commercial payment process, how do we do so?

Guidance on implementing a compliant payment process is in the GSA Policy Advisory, Guidelines for Federal Agencies on Converting to Commercial Payment Systems for Postage, which can be found at <http://www.gsa.gov/mailpolicy>.

3. Amend § 102–192.90 by revising paragraph (f) read as follows:

§ 102–192.90 What must we include in our annual mail management report to GSA?

* * * * *

(f) Describe how your agency is ensuring accountability for postage by identifying which two of the five methods (see § 102–192.55) you use to meet this objective and explaining in detail how these two apply to your agency.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAR Case 2007–021; Docket 2009–0014; Sequence 1]

RIN 9000–AL14

Federal Acquisition Regulation; FAR Case 2007–021, Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the

Federal Acquisition Regulation (FAR) to specifically require the incorporation of the FAR clauses regarding Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multi-Year and Option Contracts) and Fair Labor Standards Act and Service Contract Act-Price Adjustment in time-and-materials and labor-hour service contracts that are subject to the Service Contract Act.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before March 10, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2007–021 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2007–021” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2007–021. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FAR Case 2007–021” on your attached document.

- Fax: 202–501–4067.

- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2007–021 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR case 2007–021.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend the Federal Acquisition Regulation (FAR) to revise the clause prescriptions at FAR 22.1006(c)(1) and (2) to specifically require that time-and-materials and labor-hour service contracts subject to the Service Contract Act contain the appropriate price adjustment clauses set forth at 52.222–43 and 52.222–44.

Despite the current prescriptions which do not require use of the clauses in time-and-materials or labor-hour

contracts, there is, in fact, broad usage of the clause(s) in such contracts. Adoption of the proposed change would achieve consistency throughout the Government acquisition community and resolve potential inequities where the clauses have not been applied. Not only would this achieve an equitable result for contractors, but it would also allow the Government to avoid use of other means of adjusting contract unit price labor rates which may be more costly to the Government. Other means of adjusting contract labor rates, such as allowing for wage/benefit escalation, equitable adjustment or economic price adjustment, would likely include profit, overhead and general and administrative expenses. The clauses at 52.222-43 and 52.222-44 explicitly exclude these additional costs.

The clause prescriptions at FAR 22.1006(c)(1) and (c)(2) currently require that Service Contract Act wage determination updates be applied to contracts subject to the clause at 52.222-41, Service Contract Act of 1965, but, as required by FAR clause 52.222-41, minimum monetary wages and fringe benefits to be paid to service employees under the contract may be subject to adjustment, under wage determinations issued by the Department of Labor. While there may be other means permitted to adjust fixed labor rates on time-and-materials or labor-hour contracts, those other means will not achieve the consistent results that use of the Service Contract Act price adjustment clause(s) will achieve. Requirement by the prescription for the clauses will achieve that consistency and at the same time will allow the Government to avoid any adjustment to profit, overhead or general and administrative costs that could be incurred in addition to wage or fringe benefit costs increases.

The proposed rule requires Government time-and-materials and labor-hour service contracts to incorporate the appropriate price adjustment clauses.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely clarifies the existing

prescriptions relating to service contracts. FAR clause 52.222-41 requires contractors to comply with wage determinations of the Department of Labor and may require adjustment to wage rates during the term of the contract. Most contracts that include this clause therefore provide some mechanism for dealing with the potential required price adjustment. The Councils have been advised that use of these clauses for time-and-materials and labor-hour service contracts is already widespread. Uniform use of the appropriate clause will ensure consistency in the adjustment method for any required increase in wage rate, but should not have a significant cost impact.

An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 22 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2007-021), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: December 9, 2008.

Al Matera,
Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 22 and 52 as set forth below:

1. The authority citation for 48 CFR parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1006 [Amended]

2. Amend section 22.1006 by removing from paragraphs (c)(1) and (c)(2) “fixed-price” and adding “fixed-price, time-and-materials, or labor-hour” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212-5 [Amended]

3. Amend section 52.212-5 by removing the date of the clause and adding “(DATE)” in its place; by removing from paragraph (c)(3) “(Nov 2006)” and adding “(Date)” in its place; and by removing from paragraph (c)(4) “(Feb 2002)” and adding “(Date)” in its place.

4. Amend section 52.222-43 by revising the date of the clause, paragraph (d), and the third and fourth sentences of paragraph (f) to read as follows:

52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).

* * * * *
FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (DATE)

* * * * *

(d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor’s actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of—

* * * * *

(f) * * * The notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. * * *

* * * * *

(End of clause)

5. Amend section 52.222-44 by revising the date of the clause, paragraph (c), and the third and fourth sentences of paragraph (e) to read as follows:

52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

* * * * *
FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (DATE)

* * * * *

(c) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that

these increases or decreases are made to comply with—

* * * * *

(e) * * * The notice shall contain a statement of the amount and the change in fixed hourly rates (if this is a time-

and-materials or labor-hour contract) claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly

rates shall be modified in writing. * * *

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(End of clause)

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